

**MINUTES
of the
SIXTH MEETING
of the
REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**November 6-7, 2008
Room 322, State Capitol
Santa Fe, New Mexico**

The sixth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) was called to order by Representative Edward C. Sandoval, chair, at 9:17 a.m. on Thursday, November 16, 2008, in Room 322 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. Edward C. Sandoval, Chair
Sen. Carlos R. Cisneros, Vice Chair
Sen. Mark Boitano (11/7)
Sen. Kent L. Cravens
Rep. Anna M. Crook
Sen. Dianna J. Duran
Rep. Keith J. Gardner
Rep. Roberto "Bobby" J. Gonzales
Rep. William J. Gray
Rep. Ben Lujan
Sen. Bernadette M. Sanchez
Rep. Daniel P. Silva
Sen. John Arthur Smith
Sen. H. Diane Snyder
Rep. Thomas C. Taylor

Designees

Sen. Cisco McSorley
Rep. Henry Kiki Saavedra

Absent

Rep. George J. Hanosh
Sen. Timothy Z. Jennings
Sen. James G. Taylor

Rep. Janice E. Arnold-Jones
Sen. Sue Wilson Beffort
Rep. Donald E. Bratton
Rep. Nathan P. Cote
Sen. Phil A. Griego
Sen. John T.L. Grubestic
Sen. Stuart Ingle
Sen. Gay G. Kernan
Sen. Steven P. Neville
Rep. Andy Nunez
Rep. John Pena
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William E. Sharer
Rep. Don L. Tripp

(Attendance dates are noted for those members not present for the entire meeting.)

Guests

Rep. Janice E. Arnold-Jones

Staff

Pam Ray, Staff Attorney, Legislative Council Service (LCS)

Doris Faust, Staff Attorney, LCS

Cleo Griffith, Drafter, LCS

Tim Crawford, Historian, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and written testimony are in the meeting file.

Thursday, November 6

Taxation and Revenue Department (TRD) Proposed Legislation

Rick Homans, secretary of taxation and revenue, Jim Nunns, tax policy director, TRD, and Ken Ortiz, director, Motor Vehicle Division (MVD), TRD, appeared before the committee to discuss the draft legislation that the TRD anticipates presenting in the 2009 legislative session. Secretary Homans and Mr. Nunns discussed the following bills:

1. Personal income tax simplification. This was introduced in 2008 but was unable to make it through the senate before the end of the session. The tax tables will be changed slightly.
2. Electronic payment of taxes. This bill applies to gross receipts tax reporting of large businesses beginning in the 2009 tax year or in the second year that a business is in operation if the business has estimated taxes in the qualifying amount of greater than \$25,000 in the prior tax year. The qualifying amount decreases to \$10,000 over the three-year period following the effective date of the bill. The monthly base filing requirement level for reporting combined reporting system taxes will increase from \$200 to \$300. The TRD will be able to serve warrants of levy upon financial institutions electronically. The secretary will be given limited authority to delay accrual of interest owed for people in an area that has been declared a disaster by either the governor or the president. Third-party payers, such as payroll services, will be required to pay electronically.
3. Tax Administration Act (TAA) amendments. This bill allows disbursements of attorney fees for all tax litigation. It clarifies the tax rate for food and medical hold harmless distributions to large municipalities and counties. It extends the protest period from 30 days to 90 days and clarifies and updates the rules governing protests

and hearings. The bill also raises the threshold for attorney general review of refunds and abatements. The language for awarding of costs and fees to a taxpayer is broadened. And, finally, the bill extends the list of taxes that can be subject to setoff.

4. Confidentiality. Section 7-1-8 NMSA 1978 is rearranged in this bill by grouping exceptions to confidentiality by the type of entity receiving the tax information. Some additional entities are included as exceptions. Definitions, clarification of language and changes conforming wording to other sections also are included in the bill.
5. Withholding changes. The Withholding Tax Act and the Oil and Gas Proceeds Withholding Tax Act and related provisions are amended in order to simplify withholding for withholding agents; to simplify tax filing and payment for income recipients by removing the need for estimated payments on covered income; and, finally, to improve compliance with withholding taxes. The changes also are devised to assure consistent reporting and to require certain employers to file quarterly withholding information returns electronically. Film performing artist entities would be required to withhold. It is anticipated that the changes made in this bill will increase collections by 20 percent. It was noted in comments that employing withholding on resident oil and gas royalty recipients was in contravention of the agreement made at the time that the nonresident withholding was implemented.
6. Cigarette Tax Act and Master Settlement Agreement improved compliance. Certain definitions are conformed to improve enforcement and compliance. Distributors are allowed to sell unstamped cigarettes to one another. The period for stamping cigarettes is extended. Language in the Cigarette Tax Act and Tobacco Products Tax Act is clarified. The bill applies the tobacco products tax to samples and exempts tribal sales.
7. Tax increment development district (TIDD) changes. An omission is corrected by changing the gross receipts tax increment calculations and conforming the reporting to other tax reporting. The bill updates the list of gross receipts taxes that can be dedicated to a TIDD. In addition, rules for distributions from a gross receipts tax increment debt service reserve account are included in the draft.
8. Taxation and Revenue Department Act. The Tax Fraud Investigations Division will be added to the list of divisions of the TRD. The TRD will enter the state into the state income tax levy program, meaning the TRD will begin to accept electronic tax levies from the Internal Revenue Service (IRS) for a fee, and the TRD can charge a fee to the IRS for levies from the state. The bill appropriates an amount equal to those fees to the department.

9. Unclaimed property. This bill caps the fee that can be claimed by a person who locates a person who has property on the unclaimed property list to 10 percent of the value of the unclaimed property.
10. Child daycare credit. This bill expands the child daycare credit and increases the child daycare credit maximums. Income eligibility is raised in the bill, and the credit would phase out at twice above the New Mexico minimum wage. The rules for obtaining the credit are also simplified.

Mr. Ortiz discussed the motor vehicle bills.

11. (MVD #1) Tax identification number elimination for ID use. For some foreign nationals and others who do not have a social security number, the use of a tax identification number has been an accepted method of proving identity. However, the federal government has issued warnings that tax identification numbers in no way are reliable proof of a person's identity. Now passports and other special documents from the Mexican government, called Matricula Consular, are the documents that may be used for identification by a foreign national.
12. (MVD #2) Alternative means of renewing a driver's license. Electronic means of renewing a driver's license are authorized on a one-time basis by this bill.
13. (MVD #3) Reduced fees for renewing a driver's license at 21. All driver's licenses issued to persons under the age of 21 years will expire on the person's twenty-first birthday and have to be renewed. This bill will prorate the fees of the licenses so that a person does not have to pay full fees for a license that lasts less than the full length of the term of the license. A five percent discount from the fee is applied to fees paid by mail, on the internet or by telephone.
14. (MVD #4) Authority for telephonic hearings. This draft allows, at the discretion of a hearing officer or law enforcement officer, telephonic appearance at an implied-consent hearing for revocation of a driver's license.
15. (MVD #5) School attendance and academic proficiency required for provisional driver's licenses. A person who is between 15 years and 15 years and six months will be required to demonstrate school attendance and academic proficiency to the eighth grade level in order to obtain an instruction permit to allow that person to drive under the limited circumstances permitted by the Motor Vehicle Code, Section 66-5-5 NMSA 1978. Persons 13 and 14 years of age may not obtain a license restricted to the operation of a motorcycle not in excess of 100 cubic centimeters displacement.
16. (MVD #6) Commercial vehicle drivers. Changes to the New Mexico Commercial Driver's License Act are to clarify the term "conviction" as it applies to commercial vehicle drivers. This bill is basically cleanup and technical changes. There are some

penalty changes also. Masking prohibitions are included in this draft so that they apply to commercial vehicle drivers only.

Special District Taxation Data

Mr. Nunns, John Gallegos, chief, Bureau of Budget and Finance (BBF), Local Government Division (LGD), Department of Finance and Administration (DFA) and Isaac Montoya, executive analyst, BBF, LGD, DFA, presented information on special districts to the committee. Mr. Gallegos gave a brief explanation of the number of special districts and the amount of property-taxing authority that they may impose. His handout provided information on the remaining taxing authority in these districts.

Mr. Montoya further discussed the chart provided by the BBF noting which special districts have imposed property taxes and which have authority remaining. It was suggested by Representative Arnold-Jones that the application of yield control be specified in statute when a district is created, which would eliminate current confusion.

Mr. Nunns discussed special districts that have the authority to impose gross receipts taxes. He also provided a handout that listed districts and noted which districts had imposed gross receipts taxes and which districts have some capacity left to impose. He discussed the status of TIDDs and noted that the distributions to Mesa del Sol are now increasing. It is hoped that this trend will continue, which will indicate that development is continuing. Regarding SunCal, the State Board of Finance (SBF) authorized state gross receipts taxes to be dedicated to the TIDD, but no money is being distributed. So far, SunCal has not formed a district board, and therefore the bond fund has not been established. No notice from the SBF has yet been given on the magnitude of state gross receipts tax dedication. Other TIDDs that are on the horizon are Verde Realty, Winrock, Las Cruces downtown and Farmington. So far these are only under discussion. Mr. Nunns also presented a handout regarding tribal agreements with the state that allocate gross receipts taxes. The Jicarilla Apache Nation has a larger amount of revenue that requires a gross receipts distribution from the state because its agreement is in regard to severance taxes on natural gas and some oil.

Patricia Herrera, TRD, responded to a question from the committee by noting that Santa Fe County could impose up to a one-half percent gross receipts increment but has only imposed one-eighth percent. In response to a question about Mesa del Sol, Mr. Nunns and Norton Francis, chief economist, Legislative Finance Committee, both knew of no bonds that to date have been issued by Mesa del Sol. The expectation is that the TIDD will wait until the revenue stream is more stable before issuing the bonds. Changes expected to be made to the Tax Increment for Development Act to require greater notice to the state of bond issues, etc., will only apply to the districts now coming into existence. In response to a question by the committee, Mr. Francis noted that it would be only speculation to assess the positive economic impact of Mesa del Sol at this point. However, it can be extrapolated that economic activity at Mesa del Sol must be in the vicinity of \$25 million to \$30 million.

Residential Property Tax — Legislative Proposals

Tasia Young, lobbyist, New Mexico Association of Counties (NMAC), and Karen Montoya, county assessor, Bernalillo County, and chair of the assessors association, reviewed the real estate disclosure proposal that the counties plan to present to the legislature in January. The bill requires Realtors, title insurers and sellers to disclose to a potential purchaser the property tax that would be due on the property to be transferred based on the sales price of the property. Tracy Langford, Realtor's Association, noted that lenders cannot be included because online lenders are not regulated by the state. It was suggested by the committee that the disclosure be in writing. Discussion ensued regarding the limited remedy that this bill will provide, as the three percent increase in valuation will still apply to nonsellers of residential property. Denise Terrazas, director, New Mexico Land Title Association, working with the Title Guaranty and Insurance Company, Los Alamos, stated that the title insurers felt that this was too much liability for title insurers to agree to, especially because title insurers are under scrutiny at this time and could lose their immunity from negligence in researching titles. If there were a formula that could be used to determine potential property tax, that would ease the concern of the title insurers. The Realtor's Association noted that not all purchasers or sellers use Realtors and therefore some transfers would fall through the cracks. Requiring disclosure at closing is too late; the tax should be disclosed before the price is decided upon. This might mean that title insurers do not have a role in disclosure. The title insurers wanted clear language that affixed no penalty to an error made in calculating the potential tax.

The second bill presented was an appropriation to the Property Tax Division of the TRD to purchase computer-assisted mass appraisal (CAMA) systems for each county in the state. It requested an appropriation of \$6 million. Statewide use of CAMA technology would provide greater uniformity among counties in valuations and provide a tool to counties to make their process of valuation more professional and accurate.

The third bill would change the yield control formula and define some key terms. The NMAC board has not approved this bill as yet. Discussion of the details would have to be delayed until December, when Jim O'Neill could explain its content.

Commercial Property Tax Limitation

Dr. Charles Walker, Albuquerque, spoke of the dramatic increases he has experienced in property taxes on his commercial property. Taxes have increased as much as 300 percent in one year. Don Morgan, who accompanied Dr. Walker, agreed that commercial property taxes in Bernalillo County had increased substantially. They feel that this is detrimental to business in Albuquerque because it increases uncertainty when projecting fixed costs. For instance, determining rental and lease rates becomes impossible because the tax rates are so uncertain. It is hard to estimate the amount that should be charged for lease or rental rates to cover the costs of the property. The committee was sympathetic to Dr. Walker's concerns.

Northern Santa Fe County Tax Issues

Josh Crawford discussed the 300 percent increase in his property taxes in 2007 for the property tax year of 2006. He questioned the use of aerial photography to determine use of property for valuation purposes. He also felt comparable structure techniques should be located in the same general area as the property being valued and comparables from three or four miles from the site are not really comparable. He expressed concern that if property taxes continue to rise, then people will not be able to leave property to their children. He also was concerned that the assessors use the highest-valued property in an area as the baseline for comparison.

Domingo Martinez, county assessor, Santa Fe County, responded to Mr. Crawford's concerns by noting that assessors use more than one property to compare values with any particular property being valued. The values of properties used for comparison are averaged to get the value of a property. It was noted by committee members that the property tax protest process should be streamlined and made more accessible for taxpayers.

Nonresident Employee Allocation of Wages for Income Tax Purposes

Peter Mallery, lobbyist, Verde Realty, and Claude Billings, Verde Realty, presented a bill that would provide the authority for a business within 20 miles of the international border to identify its workers who live in an adjacent state (in this case, Texas) to take a tax credit against the employee's New Mexico income tax in an amount equal to property tax paid in the employee's state of residence for three years while the employee works in New Mexico and is not yet a resident of New Mexico.

Mr. Billings began by giving an overview of the project that Verde Realty is proposing for the Santa Teresa area. His handout describes the project in which Verde Realty is involved.

Mr. Mallery discussed the legislative proposal in detail. He noted that the bill allows an employee of a federal law enforcement agency located in New Mexico to claim a tax credit against the employee's New Mexico income tax for a period of three years in the amount of property tax paid on the employee's principal residence in the employee's state of residence. There is no carry-forward if the out-of-state property tax liability exceeds the New Mexico income tax liability. The "nonresident law enforcement employee tax credit" could be claimed for tax years beginning on January 1, 2010 through tax years beginning no later than December 31, 2019 but for no longer than a three-year period once the credit is claimed. It was thought that most employees would move quickly to New Mexico because property taxes in Texas are so high. The proposal is a negotiating tool to be added to others to entice the federal Department of Homeland Security to bring its border law enforcement facility to New Mexico. It hopefully would attract other businesses also.

Recess

The committee recessed at 4:00 p.m.

Friday, November 7

The committee was reconvened by Representative Sandoval at 9:16 a.m.

Corporate Income Tax Incentive Changes

Dan Najjar spoke to the committee regarding Intel's bill proposal regarding increasing the corporate income tax incentives regarding manufacturing investment credits, Section 7-9A-7 NMSA 1978, and the double-weighted formula for apportionment of corporate income, Section 7-4-10 NMSA 1978. He asked that the bill be removed from consideration until Intel has the opportunity to speak to the governor's staff regarding the substantive changes that are requested.

Improving Effectiveness of Tax Incentives

Richard Anklaam, executive director and president of the New Mexico Tax Research Institute (NMTRI), provided a very thorough handout on the evaluation of tax incentives and possible drafting improvements that would help make tax incentives more transparent. He stated that it is estimated that tax credits cost the state about \$80 million in revenue. He reiterated that there are five principles of good tax policy:

1. adequacy;
2. equity;
3. efficiency;
4. simplicity; and
5. comprehensiveness.

Mr. Anklaam noted that incentives are deviations that policymakers have determined fulfill economic development, social or other state goals. A good tax incentive:

1. is well-reasoned;
2. does not significantly undermine standard tax policy; and
3. requires deviations from standard tax policy to be measured and evaluated.

He discussed the pros and cons of using tax incentives for economic development policy and noted that it is relatively impossible to determine the answer to the question, "But for this incentive, would this business have come to the state?".

Tax credits for other state purposes, according to Mr. Anklaam, are usually to encourage certain behaviors or to fill in areas of the economy that the private market fails to fill. Benefits can usually be targeted because tax policy covers all corners of the economy and benefits can be capped. However, there are little available data to assess the amount of credit to be provided. The state has limited personnel to track these credits and to provide oversight of the use and usefulness of the credits. The tax system

becomes more complex with the insertion of these credits. Benefits are limited to tax liability unless the credits are made refundable. In the end, the tax system should not be used as a substitute for the appropriations process.

- Good incentives have the following characteristics:

1. The incentive is needed to reduce an existing tax "disincentive".
2. The incentive includes reasonable caps or sunsets and enables evaluation of the cost of the incentive and the effectiveness of the incentive.
3. The incentive can be used statewide and is not targeted to a region or community in the state.
4. The incentive's proponents have adequate information to assess whether the design of the incentive is effective in fulfilling the need perceived.
5. The incentive is limited in amount, is easily assessed and is small when compared to the benefit derived by the state from the activity targeted with the incentive.

- When developing an incentive, the following questions should always be answered:

1. What are the goals to be achieved?
2. What metrics will be used to determine if the goals are met?
3. How many taxpayers will benefit?
4. Why do the beneficiaries deserve special treatment?
5. Is the total fiscal impact to the state limited?
6. How does the incentive interact with other incentives?
7. How much revenue is being used Per job created? Per job existing?
8. Are there adequate data captured to provide for a full fiscal analysis of the impact of the incentive?
9. Who is bearing the burden of the incentive-caused decrease in revenue if the incentive does not cover its own costs?

- The following are issues that should be resolved in the language of each incentive:

1. What is the "stacking" order of this incentive when combined with other incentives? It should be clear how incentives can be used together or which incentives can only be used in the alternative.
2. Claims processes should clearly state how to claim the credit and how much may be claimed.
3. Preapproval should be completed by agencies other than the TRD, except where incentives can only be used if other incentives cannot be claimed, in which case, the TRD would have to approve the use of the incentive.
4. Deadlines should be clarified, applicability to certain tax years should be clearly stated and, if there are limitations on the periods when an incentive may be claimed, they should be clearly identified.

It might be best to combine existing credits into a "general business credit". Other problems with the tax system should be addressed, including pyramiding of gross receipts taxes.

It is very important that the state's tax base is not squandered in a "race to the bottom", with each state attempting to undercut the tax credits and incentives that are available in other states. It would not serve the state well and would be delivering the control of making New Mexico's tax policy to businesses that might promise to come to the state if the state just adjusts its tax incentives to provide them with more benefit. It is wiser to support the tax policy that best serves the state's needs as a whole rather than to create chaos in the tax system by providing ill-considered or overly specific tax incentives in the hope that a specific business will be attracted to the state.

Fred Mondragon, secretary of economic development, and Mr. Nunns presented a copy of the "Report on Manufacturing Incentives in New Mexico", a study completed in response to HM 37 from the second session of the forty-eighth legislature, which reviews existing tax credits and other incentives for their effectiveness in attracting or keeping manufacturing businesses in the state. There is a comprehensive discussion of the tax credits that are currently in effect at the beginning of the report. There are also charts that describe the components of each incentive, such as the existence of "carry-forward" language, refundability, transferability, the provisions for recapture, the use in conjunction with other tax incentives (double-dipping), the cap to credits claimed or the review that is required. These are all components that should be consciously considered when drafting a tax incentive and adopted or discarded and not simply ignored.

Tax Credit for Small In-State Businesses

Representative Arnold-Jones spoke about a bill she was proposing for the committee to endorse and for introduction in the 2009 legislative session regarding a general tax credit for all small businesses in New Mexico. The bill will be sent to committee members for review prior to the next meeting of the committee.

Health Care Providers Gross Receipts Tax Provisions

Linda Sechovec, lobbyist, New Mexico Health Care Association, and Mr. Nunns discussed the various existing gross receipts tax provisions that affect health care providers in New Mexico. Ms. Sechovec discussed the provisions that affect nursing homes. She noted that 26 percent of nursing homes are nonprofit facilities and 74 percent are proprietary, for-profit businesses. She noted that Medicare does not cover gross receipts taxes. Nursing homes in the state serve, on average, 3,640 persons daily. Out of \$166 million in revenue for the nursing home services provided to patients, 74 percent of the tax is paid by the federal government in Medicaid matching. Of the \$8.3 million in gross receipts that must be paid by these businesses, 74 percent, or about \$6 million, is paid by the federal government through Medicaid. For every \$0.26 paid in Medicaid by the state, an additional \$0.74 is returned to the state from the federal government's share of gross receipts taxes paid through Medicaid.

Mr. Nunns discussed a series of sections of the Tax Code that affect health care providers.

- Section 7-9-77.1 NMSA 1978 is a gross receipts deduction from Medicare payments, federal TRICARE program (U.S. Department of Defense medical).

Local Government Legislative Priorities

Ms. Young and Bill Fulginiti, executive director of the New Mexico Municipal League (NMML), presented their organizations' legislative priorities.

The NMAC would be requesting endorsements by the committee for the following proposals:

- a bill providing a \$6 million appropriation for CAMA software for county assessors to enable all counties to value property in a relatively uniform manner and have the information online to provide to the Property Tax Division of the TRD;
- a bill to alter the yield control formula; and
- a bill to disclose to residential property purchasers an estimate of the tax that will be due in the second year of ownership of newly purchased property.

The NMML had two bills that would be presented for endorsement:

- a bill to removed certain preconditions that inhibit local governments from imposing local capital outlay gross receipts taxes; and
- a bill to increase distributions to municipalities from the Law Enforcement Protection Fund.

Wellness in the Workplace Tax Credit

Jim Campbell discussed HB 148, from the second session of the forty-eighth legislature, which provided personal income tax and corporate income tax credits to employers that sponsored wellness programs for their employees.

Alcoholic Beverage Tax Issues

Attorney General Gary King and Phil Baca, assistant attorney general, discussed two proposals:

- increasing the liquor excise tax on "alcopops", which are flavored malt and other alcoholic beverages with relatively low alcohol content and geared to attract a young market that often includes minors; and
- authorizing a statewide local option liquor excise tax.

Adjournment

The committee adjourned at 4:15 p.m.